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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,134	01/12/2005	Gijsbrecht Carel Wirtz	NL 020638	6808

24737 7590 04/06/2006

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

NGUYEN, LINH THI

ART UNIT PAPER NUMBER

2627

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/521,134	WIRTZ ET AL.	
	Examiner	Art Unit	
	Linh T. Nguyen	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

A claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 13 is drawn to a “program” *per se* as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any

structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being unpatentable by Park et al (US Publication number 2002/0021635).

In regards to claims 1, 7 and 13, Park et al discloses a digital media recorder, method, and a computer capable of recording digital media sequences on a digital media carrier (Fig. 1), comprising: means for comparing the sub-sequence fingerprint with at least one second reference fingerprint (Paragraph [0035]), said second reference fingerprint being fetched from a secondary database of fingerprints (Fig. 1, element 114), yielding a second comparison value, means for storing the fingerprint in the secondary database means for extracting, from an input media sequence (Paragraph [0036]), a media sub-sequence, means for calculating a sub-sequence digital fingerprint from the media sub-sequence (Paragraph [0039]), means for comparing the sub-sequence fingerprint with at least one first reference fingerprint (Paragraph [0035]), said first reference fingerprint being fetched from a primary

database of fingerprints (Fig. 1 element 114), yielding a first comparison value, means for analyzing the first comparison value (Copy right value), means for recording the input media sequence on the media carrier (Paragraph [0041]), means for obstructing recording of the input media sequence on the media carrier depending on the first comparison value (Paragraph [0043]), means for updating the primary database with information from the secondary database that the digital media sequence has been recorded on the media carrier (Paragraph [0044]).

In regards to claims 2 and 8, Park et al discloses a digital media recorder and method where the primary database of fingerprints includes a copy count number and a copy limit number associated with fingerprints in the list (Paragraph [0039]), where the means for comparing the sub-sequence fingerprint with the first reference fingerprint includes means for comparing the copy count number and the copy limit number and where the means for updating the primary database includes means for updating the copy count number associated with the fingerprint (Paragraph [0048] and [0049]).

In regards to claims 3 and 9, Park et al discloses a recorder and method, being arranged to remove older entries from the primary database in favor of newer entries so as to limit the size of the primary database to a predetermined number (Paragraph [0049]).

In regards to claims 4 and 10, Park et al discloses a recorder and method, where

the means for updating the primary database are arranged to operate in dependence on means capable of establishing whether or not the recording of the at least one media sub-sequence is completed (Paragraph [0051]).

In regards to claims 5 and 11, Park et al discloses a recorder and method, where the obstruction means includes obstructing means capable of at least one of the actions: aborting the recording, reducing the quality of the recording, notifying a user of the obstruction (Paragraph [0043], [0044], and [0046]).

In regards to claims 6 and 12, Park et al discloses a recorder and a method, where the means for extraction of the sub-sequence includes means for extraction during a predetermined time interval (Paragraph [0053] and 0054]; extracting the length of the track verses the speed inherently includes finding the time interval), said time interval having a length determined at least partly by the type of the media sequence (Paragraph [0034]).

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh T. Nguyen whose telephone number is 571-272-5513. The examiner can normally be reached on 8:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, A. Wellington can be reached on 571-272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LN

March 24, 2006


ANDREA WELLINGTON
SUPERVISORY PATENT EXAMINER